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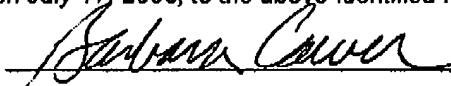
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- 1) Appeal Brief (Revised) (16 pages)
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Inventor(s): Clark, et al.

S.N.: 10/687,130

Filed: October 16, 2003

Docket # 9323M

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/687,130
Inventor(s) : Sean Thomas Clark et al.
Filed : October 16, 2003
Art Unit : 3725
Examiner : Dmitry Suhol
Docket No. : 9323M
Confirmation No. : 7351
Customer No. : 27752
Title : Interactive Child-Development Education

APPEAL BRIEF (REVISED)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

This Brief is filed pursuant to the appeal from the U.S. Patent and Trademark Office Final Office Action mailed on January 13, 2006. A timely Notice of Appeal was filed on April 13, 2006. Attached is the revised Appeal Brief in response to USPTOL-462, mailed on July 12, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

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STATUS OF CLAIMS

Claims 1 and 4-12 are rejected.

The rejections of Claims 1 and 4-12 are appealed from.

Claims 2-3 and 13-21 have been previously canceled.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

An amendment was filed on January 26, 2006. This amendment corrected a spelling error and typographical error in each of Claims 1 and 12. An advisory action mailed on February 15, 2006 indicated that this amendment will be entered for purposes of appeal. The attached Claims Appendix incorporates these amendments.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 and its dependent claims are directed to an educational apparatus comprising a structure divided into two or more areas. (Page 8, line 26 – page 9, line 4; Fig. 2 elements 38 and 39; Fig. 3 element 38; Fig. 4 element 39).

The first area houses a first three-dimensional interactive educational aide and the second area houses a second three-dimensional interactive educational aide. (Page 8, line 26 – page 9, line 4; Page 10, line 15 – page 11, line 17; Fig. 3 elements 42 and 40; Page 12, lines 8-29; Fig. 4 elements 52 and 54).

Each of the first and second aides when used by an adult user provides a demonstration directly to such user a demonstration which simulates the experience of a child engaged in an event or activity. The simulation provided by the first aide corresponds to a first child stage of development. The simulation provided by the second aide corresponds to a second child stage of development. The first and second stages differ from one another. (*Id.*; Page 13, line 11 – page 14, line 2; Fig. 5 elements 60 and 62).

Claim 12 is directed to an educational apparatus having first and second three dimensional interactive educational aides. The aides have labeling, indicia or other insignia which communicates their respective correspondence to a first and second stage

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of child development. (Page 15, lines 6-18). Each of the aides proves information to an adult user relating to an aspect of child development where such information corresponds to said first or second stage respective stage of child development. (Page 10, line 15 – page 11, line 9; Fig. 3 element 42).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- I. Claims 1, 4-5, and 8-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gibson et al. (US 5,413,488).
- II. Claim 12 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Stamm et al (US 2003/0118975).
- III. Claims 1, 4-7, 9 and 12 stand rejected under 35 U.S.C. § 103 as obvious over Yoon (US 6,418,495).
- IV. Claims 1, 4, and 9-11 stand rejected under 35 U.S.C § 103 as obvious over Stamm et al. in view of "Broadlands Community Forums."

ARGUMENTS

- I. Claims 1, 4-5, and 8-10 are not anticipated under 35 U.S.C. § 102(b) by U.S. Patent 5,413,488 to Gibson et al. (Exhibit A).

In order to maintain a rejection under 35 U.S.C. § 102 of a patent application claim, the Office Action must properly construe the claim, and show that each and every element of the properly construed claim is present in a single piece of prior art. Because the instant rejections of Claims 1, 4-5 and 8-10 proceed from a faulty claim construction, they have not been properly shown to be anticipated by the Gibson et al. patent.

Claims in *ex parte* prosecution must be accorded their broadest reasonable meaning as understood by those having ordinary skill in the art, considered in view of the entire patent disclosure. In re Morris, 127 F. 3d 1048, 1054, 44 USPQ2d 1023 (Fed. Cir. 1997); In re Hyatt, 211 F.3d 1367, 1373, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Two requirements are clear from these and other cases establishing the standards for

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construction of patent application claims: that the frame of reference from which claim terms are to be viewed is always one of ordinary skill in the relevant art taking the entire disclosure into account, and that the meaning given to claim terms must be the broadest **reasonable** meaning.

Claim 1, requires a first and a second three dimensional interactive aide. Per the claim, the first aide

when used by an adult user provides directly to said user a demonstration of an event or activity, said demonstration **simulating the experience of a first child engaged in said event or activity, wherein said first child is in a first stage of development**

The claim contains a similar requirement with respect to the second aide, a second child, and second stage of development.

The Office Action does not point out how the Gibson et al. patent meets these limitations. Rather, the Office Action cites to such items as a steering wheel 4, toys and books (Exhibit A, column 4, lines 56-58) as meeting these limitations. A comparison of the claim language, and the disclosure of the patent, however, reveals that this disclosure clearly does not meet the above quoted portions of Claim 1. For example, there is no disclosure pointed to in Gibson et al. that the steering wheel, books, or other toys **simulate** any experience of a child in a particular stage of development when such structures are used **by an adult**. These requirements and the structural implications of these requirements are positively recited in Claim 1 and must be considered during examination. The analysis in the Office Action focuses on the child "playing" with the Gibson et al. structure, which has nothing to do with Claim 1. By contrast, Claim 1 is about an interactive simulation for an **adult**. Specifically, Claim 1 is about an interactive simulation for an adult of a **child's experience**. The Office Action does not address this aspect of the claim at all.

The most pertinent dictionary meaning of the word "simulation" is "the imitative representation of the functioning of one system or process by means of the functioning of another." In other words there must be some aspect of something mimicking or acting as some sort of representation of something else. The toy devices simply offer no such simulation capability. In fact, the Office Action makes no attempt to argue that they do. Rather, the Office Action maintains that an adult playing with a steering wheel, for example, would inherently experience the sense of touch, that such experience would be

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identical to a child's experience and, therefore, would experience a "simulation" of a child using the steering wheel.

The difficulty with this meaning given to "simulation" is that it is so broad as to render the claim limitation meaningless. Such lack of meaning combined with the clear teachings of the specification render the claim construction adopted by the Office Action unreasonable. Under the Office Action's definition, quite literally every mechanical device or object in the world could properly be considered capable of providing a "simulation" of every other person in the world's experience using that device or object. Such a construction which effectively deprives the term of all meaning whatsoever should be presumed to be unreasonable. This situation is like that faced in Curtis-Wright Flow Control Corp. v. Velan, Inc., 438 F.3d 1374, 77 U.S.P.Q.2d 1988 (Fed. Cir. 2006). There, a construction of the claim term "adjustable" which was not limited by any time, place, manner, or means of adjustment was too encompassing of virtually all mechanical devices and too divorced from the description in the specification to be correct.

Here too, the applicants have pointed to numerous examples in the specification of the claimed three dimensional interactive education aides. The Office Action dismisses applicants' references to these portions of the specification as an attempt to read limitations from the remainder of the specification into the claims. However, the claim terms in Claim 1, while functional in some respects, are a proxy for a class of **structures**. The examples in the specification are examples of such **structures**. These examples are pointed to not in order to import limitations into the claim, but to point out why construction of terms such as "simulation" which are in no way limiting are inconsistent with the specification, contrary to the reading one of skill in the art would give such terms in view of the entire disclosure, and consequently unreasonable.

To take but one example, the wobble board described on page 12 (lines 18-23) will be somewhat unstable when an adult stands on it. This lack of stability as compared to a conventional floor provides to the adult user a simulation of the experience a child in the toddler stage of development would have in attempting to walk. The Office Action's construction of the limitation quoted above would find any floor in the world proves the claimed simulation because both an adult and a child can walk on a floor in much the same way. Given this reasoning, the claim language quoted above can be met if the physical response of the object is the same, or if the adult user can imagine the experience a child would have. This, however, is not the claim language. The claimed structures (three dimensional interactive educational aides) must provide a simulation to

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an adult user of the experience of a child in a second stage of development. The fact that basic realities (such as the force of gravity and the support of the floor) are similar as compared to a child and an adult does not mean that an adult using a completely conventional structure such as a door receives any simulation of a child's experience (where the child is in a particular corresponding stage of development) using the same door. Again, if this were the case, then all objects in the world meet this standard.

There is no disclosure in Gibson et al. that the steering wheel, blocks, books, etc. would respond any differently to being manipulated by an adult than by a child. Nor is there any disclosure that the structures of Gibson et al. would provide a simulation of any experience a child in a given stage of development might encounter. The point of the citation to the specification was to contrast this lack of disclosure with examples in the specification which do meet the claim language – not to argue for an importation of limitation into the claims. The structures disclosed in the instant application respond to interaction with an adult in a way that simulates to the adult the reaction or experience a child in a given stage of development would encounter.

Another deficiency in the anticipation rejection over Gibson et al. is that the Gibson et al. patent has not been shown to disclose first and second three dimensional interactive educational aides which simulate the experience of a first and second child in a first and second stage of development, respectively. The Office Action effectively reads out the claim terms relating to correspondence of the interactive structures with differing stages of development and reads out the terms relating to simulation. For example, the Final Action on page 2 notes “With respect to the two different stages of development, as broadly required by claim 1, Gibson’s interactive aides encompass such features since to turn the steering wheel a user would have to be developing his/her muscles and coordination (considered to be part of a second stages of development), while to view the contents of a book the user would have to be developing his/her vision (considered to be part of first stage of development). This teaching clearly does not meet the requirements of the claim terms.

At best, this reading of the Gibson et al. reference establishes that an adult must use (or “develop” according to the Office Action) his or her muscles to turn a steering wheel, or use (or “develop”) his or her vision to view a book. This, however, is not what is claimed. Claim 1 requires the interactive aide to simulate the experience of a first (and second) child in a first (and second) stage of development. The development of the adult user’s vision or muscles is irrelevant to this claim language. The claim language is not

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met by an adult **observing a child** in a first or second stage of development interacting with the claimed aides to evaluate the development of the child. The claim language clearly requires the simulation and corresponding demonstration to be provided directly to the adult user when the device is used by the adult.

By ignoring these express claim requirements, the Office Action deprives key claim terms of any reasonable meaning. Further it is only by ignoring such meaning, that the Office Action is able to find all elements of Claims 1, 4-5 and 8-10 present in the Gibson et al. patent.

II. Claim 12 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Stamm et al (US 2003/0118975) (Exhibit B).

The Stamm et al. publication has not been shown to meet each and every limitation of Claim 12 as is required for an anticipation rejection. The final paragraph on page 3 carrying over to page 4 of the Final Action maintains:

Stamm discloses a system and method facilitating early childhood brain development which utilizes a number of education aides (102) containing a number of activity items which relate to a specific stage of development (infant, baby, toddler, preschooler). Stamm further teaches that his educational aides are comprised of indicia which communicates [sic] the correspondence of the educational aides to the specific stage of development (figures 5-8).

This analysis is the entirety of the reasoning supporting the rejection of Claim 12 over Stamm et al. Stamm et al. is directed to a series of activities with corresponding instructional materials and items which may be used to facilitate development of children. This is not what is claimed in Claim 12, however. Stamm et al. has not been shown to disclose two or more three dimensional interactive educational aides which provide information to an **adult user** relating to an aspect of child development corresponding to a particular stage of development. At best, Stamm et al. discloses instructions which generally provide information which may be read regarding childhood development. Such instruction sheets (such as those shown in Exhibit B, figures 5-8) are not three dimensional and are not interactive as those terms are used in the claim (see, e.g. the specification at page 10, line 33 – page 11, line 9).

Additionally, the cited disclosure of Figures 5-8 does not in fact provide evidence that the three dimensional interactive aides **themselves** are provided with common

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labeling, indicia or other insignia communicating their correspondence to a particular stage of child development. The cited figures merely describe activities that one could engage in using various supplies or items. This disclosure does not meet the clear language of Claim 12 which requires that the aides be labeled and that such labeling (or insignia or indicia) communicate the correspondence of the aide to a particular stage of development.

Because each and every element of properly construed Claim 12 has not been shown to be disclosed in Stamm et al., the rejection of this claim under 35 U.S.C. § 102(e) should be reversed.

III. Claims 1, 4-7, 9 and 12 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Patent 6,418,495 to Yoon (Exhibit C).

Claims 1, 4-7 and 9

The Office Action has not made out a proper *prima facie* case of obviousness over Yoon with respect to any of these claims.

The Office Action is deficient with respect to at least two of the Graham factors: determining the scope and content of the prior art, and resolving the differences between the claimed invention and the prior art. The deficiencies with respect to claim construction noted above with respect to Gibson et al. apply to the rejection under § 103 over Yoon as well. The Final Action accords the claim terms in Claim 1 the same construction noted above, and the comments made above are also relevant to the rejection under § 103.

Claim 1, for example, claims a first and a second three dimensional interactive aide. Per the claim, the first aide

when used by an adult user provides directly to said user a demonstration of an event or activity, said demonstration **simulating the experience of a first child engaged in said event or activity, wherein said first child is in a first stage of development**

The claim contains a similar requirement with respect to the second aide and a second child in a second stage of development.

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The Office Action does not point out how the Yoon patent meets these limitations. Rather, the Office Action cites to such items as a learning board 11 (Exhibit C, Fig. 2) and balls 44, (Exhibit C, Fig. 9) as meeting these limitations.

A comparison of the claim language, and the disclosure of the patent, however, reveals that this disclosure clearly does not meet the above quoted portions of Claim 1. In this regard, all of the discussion above with respect to Gibson et al. is equally applicable with respect to Yoon. Yoon merely discloses various toys and activities for children. These have not been shown to be claimed interactive aides which when used by an adult simulate the experience of a child in a particular stage of development.

Additionally, the resolution in the Office Action of even the acknowledged differences between Yoon and Claim 1 is insufficient to establish a *prima facie* case of obviousness. The Office Action on page 5 concludes that it would have been obvious to include educational aides "directed to different stage of development of children since Yoon clearly discloses that the three-dimensional interactive aides of this invention can be customized to a variety of ages and a variety of educational needs." Even if this is the case, however, this only provides motivation for providing toys, activities and the like geared toward children in different age groups. This is not the same as providing a series of interactive aides which simulate to an adult an experience of a child in a series of different stages of development, which is the invention of Claim 1.

Given the factual difference between the prior art as applied and the claim language and the failure of the prior art even when modified per the Office Action to teach or suggest all claim elements, there has been no proper *prima facie* case of obviousness with respect to Claim 1. As such, this rejection should be reversed. Similarly, the rejections of Claim 4-7, and 9 which depend from Claim 1 should also be reversed for at least the reasons discussed above with respect to Claim 1.

Claim 12

Claim 12 has also been rejected as obvious over the Yoon patent. The Office Action asserts on page 5 that Yoon discloses (Exhibit C, at column 2, lines 52-60) that the three dimensional interactive educational aides are related by common labeling, indicia or other insignia. The Yoon patent does indeed disclose that the activity items can be provided with indicia relating such items as balls to other items such as learning

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boards. However, this disclosure does not suggest that such indicia, labeling, or insignia communicates the correspondence of the aides to a particular stage of child development (such as a first stage and a second stage) which is the requirement of Claim 12. The Office Action makes no attempt to resolve this difference between the prior art and Claim 12 as establishing a *prima facie* case of obviousness requires. As such, this rejection should be reversed.

IV. Claims 1, 4, and 9-11 stand rejected under 35 U.S.C § 103 as obvious over Stamm et al. in view of "Broadlands Community Forums." (Exhibit D)

The Office Action has not made out a proper *prima facie* case of obviousness with respect to any of these claims. Firstly, the applicants do not concede that "Broadlands Community Forums" (Exhibit D, a printout of what appears to be a series of internet bulletin board posts) is indeed prior art. The printed pages do appear to give dates of posting which would qualify as § 102(a) art, but applicants have no way of knowing if the "posting" date corresponds to the date that such matter was hosted on the internet which would make it "published." Therefore, applicants do not concede that this information in fact has been shown to be a "printed publication" within the meaning of § 102(a) as of the filing date of the present application. Additionally, as § 102(a)/103 art, it is subject to removal under Rule 131. Applicants reserve the right to contest the prior art status of this information, but need not do so at this time, because even assuming it is in fact prior art, it is insufficient to support the rejections made. Secondly, applicants do not concede that the Broadlands Community Forums document would be considered pertinent or analogous art by one having ordinary skill in the art to which the invention of Claim 1 pertains. It is unclear whether the Office Action is relying on the statements in the posts themselves or the description of what day care "experts" do. In any event, objections to these evidence of the state of the prior art are expressly not waived, but for purposes of responding to the rejections it is assumed that this document is in fact proper analogous art. Even with this assumption, the rejections fall short for the reasons articulated below.

The rejection of Claim 1 over Stamm et al. in view of Broadlands is premised on the same basic application of the Stamm et al. patent application described above with respect to Claim 12. The Office Action on page 6 asserts that the toys and activity supplies of Stamm et al. when used by an adult user would inherent simulate the experience of a user child of the aide. This is simply not the case, the Office Action makes no showing how ball, for example, inherently simulates the experience of a child

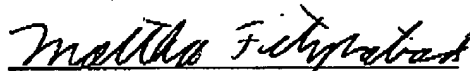
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in a particular stage of development to an adult. Even granting that Broadlands properly suggest modifying Stamm et al. to divide the structure into two or more areas, the basic failure of Stamm et al. to disclose the **claimed** interactive three dimensional educational aides having all of the claimed properties (as distinguished from three dimensional educational items generally) has not been remedied. In this regard, the arguments with respect Ground of Rejection I pertaining to claim construction are equally applicable here. As such, the combination of the Stamm et al. patent and the Broadlands document has not been shown to make out a proper *prima facie* case of obviousness of Claim 1 or of Claims 4, and 9-11 which depend from Claim 1. Therefore, these rejections should be reversed.

SUMMARY

In view of all of the above, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences reverse the rejections of Claims 1 and 4-12.

Respectfully submitted,



Signature

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Date: July 17, 2006

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CLAIMS APPENDIX

1. (Rejected) An educational apparatus comprising:
 - a. a structure divided into two or more areas wherein said structure comprises at least a first area and a second area,
 - b. a first three dimensional interactive educational aide, said first three dimensional interactive education aide being located in said first area,
 - c. a second three dimensional interactive educational aide, said second three dimensional interactive educational aide being located in said second area,
 - d. wherein said first three dimensional interactive educational aides when used by an adult user provides directly to said user a demonstration of an event or activity, said demonstration simulating the experience of a first child engaged in said event or activity, wherein said first child is in a first stage of child development, and
 - e. wherein said second three dimensional interactive aide when used by an adult user provides directly to said user a demonstration of an event or activity, said demonstration simulating the experience of a second child engaged in said event or activity, wherein said second child is in a second stage of child development wherein said first stage of development and said second stage of development differ from one another.
- 2-3 (Canceled)
4. (Rejected) The educational apparatus of claim 1 wherein said first interactive educational aide provides information regarding a first aspect of child development wherein said first aspect is chosen from the group consisting of physical development, motor skills, emotional development, sensory development, and coordination, and wherein said second interactive aide provides information regarding a second aspect of child development wherein said second aspect is chosen from the group consisting of physical development, motor skills, emotional development, sensory development, and coordination.

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5. (Rejected) The educational apparatus of claim 1 wherein said structure is movable.
6. (Rejected) The educational apparatus of claim 1 wherein said structure is capable of being placed into a portable configuration.
7. (Rejected) The educational apparatus of claim 1 wherein said structure comprises a tent.
8. (Rejected) The educational apparatus of claim 1 wherein said structure comprises a trailer.
9. (Rejected) The educational apparatus of claim 1 wherein said structure is self-contained.
10. (Rejected) The educational apparatus of claim 1 wherein said structure is divided into at least four areas, wherein said structure comprises at least a first area, a second area, a third area, and a fourth area.
11. (Rejected) The educational apparatus of claim 10 wherein said first area is adapted to provide information regarding a first baby stage of development wherein said first stage of development pertains to babies prior to being able to crawl or walk, said second area is adapted to provide information regarding a second baby stage of development wherein said second stage of development pertains to babies who are able to crawl or walk for short distances, said third area is adapted to provide information regarding a third stage of development wherein said third stage of development pertains to children who are able to walk and are learning to run, and wherein said fourth area is adapted to provide information regarding a fourth stage of development wherein said fourth stage pertains to children who are able to run and are able at least partially to dress or undress themselves.

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12. (Rejected) An educational apparatus comprising a first three dimensional interactive educational aide, said first three dimensional interactive educational aide comprising labeling, indicia, or other insignia which communicates the correspondence of said first three dimensional interactive educational aides to a first stage of child development, and a second three dimensional interactive educational aide, said second three dimensional interactive educational aide comprising labeling, indicia, or other insignia which communicates the correspondence of said second three dimensional interactive aide to a second stage of child development, wherein each of said first and said second three dimensional interactive educational aides provides information to an adult user relating to an aspect of child development said information corresponding to one of said first or said second stage of child development.

13-21. (Canceled)

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EVIDENCE APPENDIX

Exhibit A

U.S. Patent 5,413,488 issued to Gibson et al.

Exhibit B

U.S. Patent Application 2003/0118795 to Stamm et al.

Exhibit C

U.S. Patent 6,168,495 issued to Yoon.

Exhibit D

"Broadlands Community Forums" printout.

Exhibit E

"Merriam-Webster OnLine Dictionary" printout of the word *simulation*.

CASES CITED

In re Morris, 127 F. 3d 1048, 1054, 44 USPQ2d 1023 (Fed. Cir. 1997)

In re Hyatt, 211 F.3d 1367, 1373, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)

Curtis-Wright Flow Control Corp. v. Velan, Inc., 438 F.3d 1374, 77 U.S.P.Q.2d 1988 (Fed. Cir. 2006)

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RELATED PROCEEDINGS APPENDIX

There are no related proceedings for this Appendix.